

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

No. 04CV12333 MEL

CASAS, BENJAMIN & WHITE, LLC

Plaintiff,

v.

THE POINT GROUP, INC.

GERALD S. FREID, BARRY FREID;

KEY CORPORATE CAPITAL, INC.

Defendants

AFFIDAVIT OF STEPHEN F. GORDON

I, Stephen F. Gordon, on oath, do depose and state that:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.

2. I represent The Pointe Group, Inc. ("TPG"), Gerald S. Freid and Barry Freid in the above-captioned matter pending before this Court.

3. On September 1, 2004, I received an e-mail from Matt Caine ("Caine"), a Principal of Plaintiff, Casas, Benjamin & White, LLC ("CBW"). In his September 1, 2004 e-mail to me, Caine requested that I provide him with a copy of the section of the Purchase and Sale Agreement relating to CBW's role as the "broker of record." (Caine's words, used twice). A true and accurate copy of Caine's September 1, 2004 e-mail to me is attached hereto as Exhibit A.

4. I responded to Caine's September 1, 2004 e-mail the very same day by quoting the text to section 30 of the Purchase and Sale Agreement which named CBW as the exclusive broker (using the word no less than five times, including the subject of the section). A true and

accurate copy of my September 1, 2004 e-mail response to Caine's September 1, 2004 e-mail is attached hereto as Exhibit B.

5. On September 2, 2004, Caine responded to my e-mail dated September 1, 2004, in which I quoted section 30 of the Purchase and Sale Agreement (the section that refers to CBW as the exclusive broker), by stating that he appreciated my quick response and that it was "most helpful." A true and accurate copy of Caine's September 2, 2004 e-mail is attached hereto as Exhibit C.

6. Neither Caine, nor any other representative of CBW, ever expressed any objection to me as to CBW's classification as broker in section 30 of the Purchase and Sale Agreement or otherwise.

7. On October 1, 2004, the day after the closing, CBW requested a copy of the closing statement in a telephone call to me. I did not have a copy when the request was made. I received it from buyer's counsel at 12:21PM that day. Only twenty minutes later, I sent a copy of the closing statement via e-mail to Edward R. Casas, Managing Director of CBW, and Caine. A true and accurate copy of my October 1, 2004 e-mail, including the closing statement that was attached, is attached hereto as Exhibit D.

Signed under the pains and penalties of perjury this 4<sup>th</sup> of January, 2005

/s/ Stephen F. Gordon  
Stephen F. Gordon

# **EXHIBIT A**

**From:** Matt Caine [mailto:mcaine@cbwllc.com]  
**Sent:** Wednesday, September 01, 2004 3:09 PM  
**To:** 'Stephen Gordon'  
**Cc:** GF47@aol.com  
**Subject:** Purchase & Sale Agreement

Steve,

I hope that you are well. I spoke with Gerry this afternoon and it sounds as if the intended transaction with Epoch is moving forward in a meaningful way. I had asked Gerry and now ask you (Gerry asked that I email you) if you could please forward to me a copy of the section(s) in the Purchase & Sale Agreement that relate to the broker of record and Casas, Benjamin & White's role. Recognize that this request is not for a complete copy of the agreement, rather just those sections that relate to our involvement and the named broker of record.

Your assistance in this matter is greatly appreciated. Copies of this information can be forward via email or fax to my attention. Give a call with any questions.

Thanks.

Matt

Fax: (404) 816-0248  
Email: mcaine@cbwllc.com

## **EXHIBIT B**

## Stephen Gordon

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**From:** Stephen Gordon [sgordon@gordonhaley.com]  
**Sent:** Wednesday, September 01, 2004 11:06 PM  
**To:** 'Matt Caine'; 'Stephen Gordon'  
**Cc:** 'GF47@aol.com'  
**Subject:** RE: Purchase & Sale Agreement

Matt- Section 30 of the Purchase and Sale Agreement provides as follows:

Broker. Buyer and Sellers each hereby represents and warrants to each other that no broker or agent has been engaged in regard to this Agreement other than Casas Benjamin & White, LLC, who has been engaged by Sellers. Sellers and Broker have entered into a separate Brokerage Agreement. Sellers shall be responsible for paying Broker and shall hold Buyer harmless from any claim by Broker

Hope this is helpful.  
Steve

Stephen F. Gordon  
Gordon Haley LLP  
101 Federal Street  
Boston, MA 02110  
Phone: 617-261-0100 Ext 28  
Fax: 617-261-0789  
sgordon@gordonhaley.com

-----Original Message-----

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Your assistance in this matter is greatly appreciated. Copies of this information can be forward via email or fax to my attention. Give a call with any questions.

Thanks.

Matt

Fax: (404) 816-0248  
Email: mcaine@cbwllc.com

## **EXHIBIT C**

**Stephen Gordon**

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**From:** Matt Caine [mcaine@cbwllc.com]  
**Sent:** Thursday, September 02, 2004 3:24 PM  
**To:** 'Stephen Gordon'  
**Cc:** GF47@aol.com  
**Subject:** RE: Purchase & Sale Agreement

Steve,

I appreciate the quick response on this request. This was most helpful. Let me know if there is anything that we can continue to do in support of TPG's efforts on this transaction. Thanks.

Matt

Matt Caine, CFA  
Principal  
Casas, Benjamin & White, LLC  
3414 Peachtree Rd., Suite 450  
Atlanta, GA 30326

P: (404) 816-0049 x210  
F: (404) 816-0248  
E: [mcaine@cbwllc.com](mailto:mcaine@cbwllc.com)  
W: [www.cbwllc.com](http://www.cbwllc.com)

-----Original Message-----

**From:** Stephen Gordon [mailto:[sgordon@gordonhaley.com](mailto:sgordon@gordonhaley.com)]  
**Sent:** Wednesday, September 01, 2004 11:06 PM  
**To:** 'Matt Caine'; 'Stephen Gordon'  
**Cc:** GF47@aol.com  
**Subject:** RE: Purchase & Sale Agreement

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Hope this is helpful.  
Steve

Stephen F. Gordon  
Gordon Haley LLP  
101 Federal Street  
Boston, MA 02110  
Phone: 617-261-0100 Ext 28  
Fax: 617-261-0789  
[sgordon@gordonhaley.com](mailto:sgordon@gordonhaley.com)

-----Original Message-----



## **EXHIBIT D**

**Stephen Gordon**

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**From:** Stephen Gordon [sgordon@gordonhaley.com]  
**Sent:** Friday, October 01, 2004 12:41 PM  
**To:** 'Edward R. Casas'; 'Matt Caine'  
**Subject:** FW: TPG Closing Statement.XLS (FOR SETTLEMENT PURPOSES ONLY)

Ed-I am forwarding to you the just received Closing Statement. As you can see, the "Seller" was required to **pay** over \$200,000 at closing. Some benefit to the Seller. I hear that my clients are not the only ones you have threatened. I don't think that you are advancing your cause and I think you need advice. I appreciate your need to confer with counsel and I, of course, encouraged you to do so. Please either have your lawyer call me, call me with your lawyer or have your lawyer call me and let me know that it is ok to speak with you without him/her on the phone. Cell 617-872-3434. Steve

Stephen F. Gordon  
Gordon Haley LLP  
101 Federal Street  
Boston, MA 02110  
Phone: 617-261-0100 Ext 28  
Fax: 617-261-0789  
sgordon@gordonhaley.com

-----Original Message-----

**From:** Sucoff, Andrew C [mailto:ASucoff@goodwinprocter.com]  
**Sent:** Friday, October 01, 2004 12:19 PM  
**To:** gordon@gordonhaley.com  
**Subject:** TPG Closing Statement.XLS

<<TPG Closing Statement.XLS>>

**Andrew C. Sucoff, Esq.**  
**Goodwin Procter, LLP**  
**Exchange Place**  
**Boston, MA 02109**  
**Phone: (617) 570-1995**  
**Fax: (617) 227-8591**  
**MailTo:asucoff@goodwinprocter.com**

\*\*\*\*\*  
This message is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to the attorney-client privilege or other confidentiality protections. If you are not a designated recipient, you may not review, copy or distribute this message. If you receive this in error, please notify the sender by reply e-mail and delete this message. Thank you.  
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**Closing Statement****Buyer's Nominee:** Nationwide Health Properties**Seller:** Cranberry Pointe Partnership, Cranberry Pointe Nursing Home, Inc., Hammond Pointe Nursing Home, LLC, Boylston Place at Chestnut Hill, LLC, and Chestnut Hill Life Care Realty, LLC**Tenant:** Epoch SL VII, Inc., Epoch SL VIII, Inc. and Epoch SL IX, Inc.**Closing Agent:** Fidelity National Title**Property:** Hammond Pointe Rehab. & Skilled Care Center, Cranberry Pointe, Rehab. & Skilled Care Center and Boylston Place**Closing Date:** 10/1/2004

		<u>Buyer</u>		<u>Seller</u>	
	Charge	Credit	Credit	Charge	
Purchase Price	\$31,950,000.00		\$31,950,000.00		
Deposit (held by Escrow Agent)		\$300,000.00			
Rent and Pre-paid Rent (see Schedule 1)		\$160,968.77			\$160,968.77
Security Deposits/Last Month Rent/PNA (see Schedule 2)		\$281,933.00			\$281,933.00
Real and Personal Property Taxes (see Schedule 3)		\$25,766.89			\$25,766.89
Vacation/Sick/Personal and other Employee Benefits (see Schedule 4)		\$320,401.48			\$320,401.48
Assumed Leases and Contracts (see Schedule 5)					
Medicaid User Fee		\$187,190.00			\$187,190.00
Utility and Fuel (see Schedule 6)		\$161,037.89			\$161,037.89
Closing Costs & Disbursement: (see schedule 7)	\$1,470,115.53				\$31,023,390.34
Short-year reimbursement settl	\$6,000.00		\$6,000.00		
	\$33,426,115.53	\$1,437,298.03	\$31,956,000.00	\$32,160,688.37	

**Net Funds Due from Buyer: \$31,988,817.50****Net Funds Due to Seller: (\$204,688.37)**

RECONCILIATION

Net Funds Due from Buyer	\$31,988,817.50	
Total Closing Disbursements	(\$32,493,505.87)	
Net Funds Due Seller	\$204,688.37	
Subtotal	(\$300,000.00)	
Deposit	\$300,000.00	
Total	\$0.00	<i>Should be \$0</i>

Fidelity National Title is holding the deposit,  
and will transmit it as part of net funds due seller.  
Interest on Deposit will be paid to Buyer outside closing.

Seller and Buyer approve this Closing Statement and approve the Closing Agent's disbursement of the proceeds in the manner, in the amounts and to the persons set forth herein.

Upon the close of escrow, Closing Agent agrees to disburse all sums under this Closing Statement to the designated parties.

**Buyer's Nominee:**  
Nationwide Health Properties

**Seller:**  
Cranberry Pointe Partnership,  
Cranberry Pointe Nursing  
Home, Inc., Hammond Pointe

**Closing Agent:**  
Fidelity National Title

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

Many prorations and adjustments are being made based on estimates and will be reconciled between Seller and Buyer under section 11(g) under the purchase and sale agreement.

SCHEDULE 1Rent AdjustmentRent Paid Through: 10/31/04Closing Date: 10/1/04Days to Adjust: 31Days in Month: 31

<u>Tenant</u>	<u>Collected October Rent</u>	<u>Rent Adjustment</u>
October (see rent roll)	\$101,000.00	\$101,361.48
Other Prepaid (see rent roll)		\$59,607.29

<b>TOTAL</b>	<u>\$101,000.00</u>	<u>\$160,968.77</u>
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Any rent for October previously collected and not adjusted or collected on or after the date hereof will be immediately delivered and endorsed to Tenant

**SCHEDULE 2**

**Last Month Rent, Accrued Interest, Security Deposit, PNA Adjustments**

<b><u>Tenant</u></b>	<b><u>Amount</u></b>
PNA (check delivered at closing for \$35,241 with a further adjustment once interest is known)	
Last Month + accrued interest (see Schedule)	\$281,197.00
Activity Funds	\$736.00

<b>TOTAL</b>	<b>\$281,933.00</b>
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SCHEDULE 3Real Estate Tax Adjustment

Taxes Paid Through: 9/30/2004

Closing Date: 10/1/2004

Seller Owes Buyer: 0 days of taxes

<u>Parcel</u>	<u>Yearly Tax</u>	<u>Per diem</u>	<u>Adjustment</u>
Hammond & Boylston - prelim estimate Cranberry	\$153,397.60	\$420.27	\$0.00
Total:	\$153,397.60	\$420.27	\$0.00

Taxes Paid Through: 6/30/2004

Closing Date: 10/1/2004

Seller Owes Buyer: 94 days of taxes

<u>Parcel</u>	<u>Yearly Tax</u>	<u>Per diem</u>	<u>Adjustment</u>
Cranberry	\$100,052.28	\$274.12	\$25,766.89
Total:	\$100,052.28	\$274.12	\$25,766.89

Total:	\$100,052.28	\$274.12	\$25,766.89
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SCHEDULE 4

Benefit Adjustment

	<u>Hammond</u>	<u>Boylston</u>	<u>Cranberry</u>	<u>Total</u>
Vacation				\$0.00
Sick				
Personal				
TOTAL				\$320,401.48



**SCHEDULE 5**

**Contract and Lease Adjustment**

phone  
dish

SCHEDULE 6

Utility and Fuel Adjustment

Estimated ' Harwich	water	7819	7,290.50
	water	7820	125.00
	Keyspan		14,669.20
	Nstar	POC by Seller	

Estimated Chestnut Hill	Nstar		84,454.18
	water		13,550.30
	water		13,693.50
	keyspan		27,255.21

Oil			
	Total	<hr/>	161,037.89

SCHEDULE 7Closing Costs & Disbursements

Description Payee <u>Payment Instructions (address or wire instructions)</u>	Buyer	Seller
1. Title Insurance Premium Payable to: Fidelity National <u>Payment Instructions (address or wire instructions)</u>	\$34,981.50	
2. Transfer and Recording Taxes (State) Payable to: <u>Payment Instructions (address or wire instructions)</u> 4.56/1000 CH 5.70/100 Barnstable		\$150,230.34
3. Recording Fees - estimated Payable to: <u>Payment Instructions (address or wire instructions)</u>	\$500.00	\$1,705.00
4. Broker Commission Payable to: Casas, Benjamin & White, LLC (POC by seller)		
5. Escrow for Successor Liability Payable to: Mellon Trust of New England, N.A. <u>Payment Instructions (address or wire instructions)</u> One Boston Place Boston, MA 02108 ABA: 011001234 Account Name: Cranberry Pointe Nursing Home, Inc./Epoch SL, Inc. Account Number: 058394 Attention: Gary M. Lucia, Jr. 617.722.7208		\$162,400.00
6. General Escrow Payable to: Mellon Trust of New England, N.A. <u>Payment Instructions (address or wire instructions)</u>		\$400,000.00

## Description

Payee

Payment Instructions (address or wire instructions)BuyerSeller

One Boston Place

Boston, MA 02108

ABA: 011001234

Account Name: Cranberry Pointe Nursing Home, Inc./Epoch SL, Inc.

Account Number: 058394

Attention: Gary M. Lucia, Jr. 617.722.7208

7      Payment to Settle Medicaid      \$869,055.00

Payable to: Commonwealth of Massachusetts

Payment Instructions (address or wire instructions)

Deliver to Andrew Sucoff

8.      Key Bank Payoff      \$29,425,000.00

Payable to:

Payment Instructions (address or wire instructions)

ABA: 021300077

Bank: Key Bank - Albany

Beneficiary: Risk Management

Account #810171941

Re: Chestnut Hill/Tobin - Please contact Steven Dunham at 518-257-8535

9.      Neighbor Legal Fee      \$15,000.00

retain by title company to pay legal fee as instructed by Purchaser with balance,  
if any to Seller

10.      Reimburse tenant      \$1,434,634.03

ABA # :	011-075-150
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ACCT # :	856-000-16928
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ACCT # NAME:	EPOCH Senior Living
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Sovereign Bank

\$1,470,115.53\$31,023,390.34

Total:      \$32,493,505.87

**Net Funds Due to Seller:****(\$204,688.37)**

Description

Payee

Payment Instructions (address or wire instructions)

Buyer

Seller

(if negative due from Seller)